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12 **UNITED STATES DISTRICT COURT**
NORTHERN DISTRICT OF CALIFORNIA

14 X Corp.,

15 Plaintiff,

Case No. 23-cv-03698-WHA

16 v.

Time: January 10, 2024, 8:00 AM

17 BRIGHT DATA LTD.

Court: Courtroom 12

18 Defendant

Judge: Hon. William Alsup

20 **BRIGHT DATA'S STATEMENT RECENT AUTHORITY**

22 Bright Data submits this Statement of Supplemental Authority concerning the Ninth
23 Circuit's decision this week in *Doe v. WebGroup Czech Republic, A.S.*, 2024 WL 16828 (9th Cir.
24 Jan. 2, 2024) on personal jurisdiction. (Attached Ex. 1). We submit this statement, not because
25 the case is relevant to X's claims, but to bring it to the Court's attention and to explain why it is
26 irrelevant. Put simply, *Doe* involved **federal claims** and defendants that were not subject to the
27 personal jurisdiction of **any** state court.

28 Under Federal Rule of Civil Procedure 4(k)(2), where there is federal question jurisdiction,

1 but no state court can exercise jurisdiction over the defendant, the court looks to the defendants' 2 contacts with the United States as a whole. *Id.* (quoting Fed. R. Civ. P. 4(k)(2) ("For a claim that 3 arises under federal law, serving a summons or filing a waiver of service establishes personal 4 jurisdiction over a defendant if: (A) the defendant is not subject to jurisdiction in any state's courts 5 of general jurisdiction; and (B) exercising jurisdiction is consistent with the United States 6 Constitution and laws.")). Rule 4(k)(2), therefore, is triggered only if the state court *cannot* 7 exercise personal jurisdiction.

8 In *Doe*, even though the plaintiff was a California resident, part of the tortious conduct (the 9 underlying abuse) occurred in California, and the defendant contracted with California-based 10 entities to provide its services, California lacked jurisdiction under *Shopify*. *Doe*, 2024 WL 16828; 11 *Briskin v. Shopify, Inc.*, 87 F.4th 404 (9th Cir. 2023). Indeed, because Rule 4(k)(2) would not 12 apply if California had jurisdiction, all conduct at issue in *Doe* must, by definition, fail to establish 13 conduct "expressly aimed" at California. While the plaintiff also brought a state law claim under 14 California law, the Ninth Circuit did not hold that there was independent specific personal 15 jurisdiction for that claim. Instead, it exercised pendant party jurisdiction because of the existence 16 of a *federal* claim for which there was jurisdiction under Rule 4(k)(2). 2024 WL 16828, at *4 n.5 17 ("[W]hen *federal law* allows for personal jurisdiction against a particular defendant with respect 18 to *federal claims*, pendent or supplemental jurisdiction may be asserted over related state law 19 claims against the same defendant.").

20 While in *Shopify*, the Ninth Circuit held that state courts lack personal jurisdiction "[w]hen 21 a company operates a *nationally* available e-commerce payment platform and is indifferent to the 22 location of end-users," see 87 F. 4th at 409, in *Doe*, the court explained that where federal law is 23 implicated, a broader approach is warranted. 2024 WL 16828, at *4 n.5. In such cases, if no state 24 court has personal jurisdiction over the defendant, then the court can still exercise jurisdiction if 25 the defendant has sufficient contacts with the "United States as a whole." That is, Congress's 26 power to exercise jurisdiction over foreign defendants consistent with the Constitution of the 27 United States is broader than any individual State's power to interfere with interstate commerce 28 by exercising personal jurisdiction over national internet platforms.

1 This principle disposes of X's claims because it only brings state law causes of action.
2
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4 Dated: January 5, 2024

Respectfully submitted,

5 /s/ Colin Kass

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